STATE OF MICHIGAN

COURT OF APPEALS

KIMBERLY GUENTHER, Individually and as the Trustee of the GENEVA GUENTHER TRUST,

Plaintiff-Appellant,

v

CITY OF PLYMOUTH, a Municipal Corporation, CITY OF PLYMOUTH COMMISSION, and CITY OF PLYMOUTH PLANNING COMMISSION,

Defendants-Appellees.

UNPUBLISHED
September 23, 2003

No. 239902
Wayne Circuit Court
LC No. 01-118689-NZ

Before: Owens, P.J., and Griffin and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition. Plaintiff had alleged that defendants violated the Telecommunications Act of 1996, 47 USC 151 *et seq.*, by refusing to allow him to erect a wireless communications tower on trust property. Plaintiff also alleged that defendants' actions were unconstitutional, violated federal and state antitrust laws, and tortuously interfered with an advantageous business relationship. The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(4). We affirm.

Generally, we review de novo a trial court's grant or denial of a motion for summary disposition. *Sun Communities v Leroy Twp*, 241 Mich App 665, 668; 617 NW2d 42 (2000). A summary disposition motion pursuant to MCR 2.116(C)(4) tests the trial court's subject matter jurisdiction. "Summary disposition for lack of jurisdiction under MCR 2.116(C)(4) is proper when a plaintiff has failed to exhaust its administrative remedies." *Citizens for Common Sense in Gov't v Attorney Gen*, 243 Mich App 43, 50; 620 NW2d 546 (2000). Here, plaintiff did not seek a variance from the zoning amendment or pursue his application upon the expiration of the moratorium. In fact, plaintiff filed the instant lawsuit before the moratorium even expired. Accordingly, the trial court did not err as a matter of law in ruling that plaintiff failed to exhaust his administrative remedies. Consequently, the trial court did not err in granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(4).

Moreover, we conclude that plaintiff's so-called "other causes of action" were not ripe for judicial review. Initially, we reject plaintiff's contention that his constitutional challenge to

defendants' actions was a "facial" challenge, rather than an "as applied" challenge. The gravamen of plaintiff's complaint, and even his proposed amended complaint, plainly presented an "as applied" constitutional challenge. In regard to the proposed amended complaint, we note that merely inserting conclusory words, such as "on its face," is not enough to convert an "as applied" challenge into a "facial" challenge.[1] Thus, plaintiff's constitutional challenge was subject to the rule of "finality." *Paragon Properties Co v Novi*, 452 Mich 568, 576-577; 550 NW2d 772 (1996). Here, defendants have not made a final ruling on plaintiff's application, nor have they even been presented with an application for a variance. Therefore, we conclude that plaintiff's constitutional challenge to defendants' actions was not ripe for judicial review. *Id.* at 583.

Further, in the absence of a final ruling by defendants, plaintiff's other actions were not ripe for judicial review. Consequently, the trial court did not err in granting defendants' motion for summary disposition.[2]

Affirmed.

/s/ Donald S. Owens
/s/ Richard Allen Griffin
/s/ Bill Schuette

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[1] Therefore, we are not persuaded that an error requiring reversal resulted from the trial court's failure to rule on plaintiff's motion to amend.

[2] We may, of course, affirm where the trial court reaches the right result, but for the wrong reason. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001).